	<b>Winchester City Sheriff's Office</b> <b>Manual of General Orders</b>  <b>Administration</b> <b>105</b>	<b>Effective Date:</b> May 1, 2014 Accreditation Standards: ADM .02.02 ADM .02.03
		<b>Original Policy:</b> May 1, 2014 <b>Last Review Date:</b> October 31, 2023 <b>Next Review Date:</b> October 31, 2024
<b>Subject: Arrest Procedures</b>		<b>By Authority of:</b> <hr/> William E. Sales, Sheriff

Effective /Review Date	Sections Changed	Changes	Reviewed by	Approved by
06-15-16	III C. (b)	Changed "irginia" to "Virginia".	EAS	LRT
06-11-20	III C 9	Changed "9. INJURY BEFORE OR DURING ARREST" to "CARE IN CUSTODY"	EAS	LRT
06-11-20	III C 9 a.	Changed "a" to "e".	EAS	LRT
06-11-20	III C 9	<p>Added, "a. Deputies have a duty to ensure the safety and monitor the health of individuals that are detained or arrested.</p> <p>b. Upon restraining or arresting an individual, the deputy shall immediately:</p> <p>i. Assess the individual for injuries.</p> <p>ii. Place them into a recovery position.</p> <p>iii. Assist them into a standing position. (DO NOT hyperextend the individual's arms when assisting them to the standing position.)</p> <p>iv. If injured or experiencing a medical emergency, call for medical assistance and provide first aid and lifesaving skills.</p> <p>v. If not injured, Forthwith, place them into the secured area of a patrol car.</p> <p>c. Deputies shall assess those in custody during transport or recently arrested in 5-minute intervals, providing that they have not been involved in a physical altercation or an extremely stressful situation.</p> <p>d. Deputies shall assess those in custody that have been involved in a physical altercation or an extremely stressful situation every minute after detainment or arrest. This includes</p>	EAS	LRT

		<p>altercations that may have taken place prior to law enforcement intervention.</p> <p>f. Deputies shall provide basic medical support to any individual needing assistance until trained medical personnel arrive or the individual is admitted for treatment to a medical facility.</p> <p>g. Medical treatment provided will be documented in the form of a report.</p> <p>h. During a Use of Force arrest/detainment, Deputies shall document why, as well as what force was used.</p> <p>i. All deputies involved in the application of force shall submit a "Use of Force" form to the Chief Deputy.</p> <p>j. Deputies have an affirmative duty to act if they observe another deputy using force that is clearly beyond that which is objectively reasonable under the circumstances and shall safely intercede to prevent the use of excessive force. Deputies shall promptly report any such incident to a supervisor.</p> <p>k. Deputy sheriffs and supervisors may be disciplined for the following:</p> <p>i. Applying or participating in the application of inappropriate or excessive force;</p> <p>ii. Failure to intervene in the application of inappropriate or excessive force, if present, during the application of such force;</p> <p>iii. Failure to report known or suspected inappropriate or excessive use of force.</p>		
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**I. PURPOSE**

The purpose of this policy is to define the authority of deputies to arrest, and the mechanism for making an arrest with and without a warrant.

**II. POLICY**

It is the policy of the Winchester City Sheriff's Office that deputies shall accordingly exercise critical judgment in making an arrest. Such judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Deputies shall further consider alternatives to arrest consistent with carrying out their law enforcement mission.



### III. PROCEDURE

A. Definition of Arrest: An arrest constitutes a seizure of the person for Fourth Amendment purposes. Further, the Fourth Amendment requires probable cause to arrest, before a deputy can make an arrest. The test, in interviews or stops of persons, for whether an arrest has occurred--or a seizure of the person--is whether a reasonable person under the circumstances would have felt free to leave.

#### 1. ARRESTS WITH A WARRANT

- a. Who may issue: An arrest warrant may be issued by any judge or clerk of any circuit court, general district court, juvenile and domestic relations court or magistrate (Virginia Code § 19.2-71).
  - b. What to recite: Virginia Code § 19.2-72 provides that the person having authority to issue an arrest warrant shall first examine on oath any complainant or other witness and, if probable cause exists, issue the warrant.
  - c. What the Warrant Contains: A warrant commands the accused to appear before a court at a stated time and place. The warrant or summons will give the name of the accused, or a description if his/her name is not known, describe the offense and name the violation, and be signed by the magistrate. The warrant contains the complaint, and the "complaint shall consist of sworn statements of a person or persons of fact relating to the commission of an alleged offense." The warrant must not be too general or leave too much discretion to the deputy to decide which suspect to arrest.
  - d. Issuance of a Summons Instead of a Warrant: Virginia Code § 19.2-73 provides for issuance of a summons instead of a warrant by the magistrate or judge "where there is reason to believe that the person charged will appear in the courts having jurisdiction over the trial of the offense charged." Summonses impose the same requirements to appear at an appointed place and time as with a warrant.
  - e. Notice of Issuance of Warrants or Summonses: Virginia Code § 19.2-73.1 provides that the Sheriff's Office may notify citizens of pending misdemeanor or Class 5 and 6 felony warrants or summons, and direct the accused to appear at the time and place directed for the purpose of the execution of such summons or warrant.
  - f. Issuance and Service of a Summons in Place of Warrants in Misdemeanor Cases  
Virginia Code § 19.2-74.
- (1) Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to

appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82. Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction.

- (2) Whenever any person is detained by or is in the custody of an arresting deputy for a violation of any county, city or town ordinance or of any provision of this code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor in which he/she cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in Virginia Code § 18.2-388, the arresting deputy shall take the name and address of such person and issue a summons or otherwise notify him/her in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his/her written promise to appear at such time and place, the officer shall forthwith release him/her from custody. However, if any such person shall refuse to discontinue the unlawful act, the deputy may proceed according to the provisions of Virginia Code § 19.2-82.
- (3) Any person so summoned shall comply with the requirements of Chapter 23 (Virginia Code § 19.2-387 et, seq.) of this title when they appear in court. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in Virginia Code § 19.2-390.
- (4) Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting deputy or another law enforcement officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of Virginia Code § 19.2-82.
- (5) Any person who willfully violates his/her written promise to appear given in accordance with this section, shall be treated in accordance with the provisions of Virginia Code § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he/she was originally arrested.
- (6) Any person charged with committing any violation of Virginia Code § 18.2-407 (Unlawful Assembly) may be arrested and immediately brought before the magistrate who shall proceed as provided in Virginia Code § 19.2-82.
  - g. Copy of Process to be Left with Accused: Virginia Code § 19.2-75 except as provided in Virginia Code § 46.2-936, any process issued against a person charged with a criminal offense shall be in duplicate and the deputy serving such process shall leave a copy with the person charged.
  - h. Execution of Arrest Warrants: Virginia Code § 19.2-76 provides that a warrant shall be executed by the arrest of the accused, and that a deputy may execute within his/her jurisdiction a warrant or summons issued anywhere in the state.

B. Virginia Code § 19.2-76 discusses the obligations of deputies as follows:

- (1) A deputy may execute within his/her jurisdiction a warrant or summons issued anywhere in the state. A warrant shall be executed by arrest of the accused, and a summons shall be executed by delivering a copy to the accused personally, or if the accused be a corporation, in



the same manner as in a civil case. The deputy executing a warrant shall endorse the date of the execution thereon and make return thereof to a judicial official having authority to grant bail. The deputy executing a summons shall endorse the date of execution thereon and make return thereof to the court to which the summons is returnable

(2) Whenever a person is arrested upon a warrant in a county or city contiguous to the county or city in which the charge is to be tried, the deputy making the arrest may deliver the accused to the custody of an officer of a law enforcement agency having jurisdiction in the county or city in which the charge is to be tried, or he/she may bring the accused before a judicial officer to be dealt with as is provided hereinafter.

(3) Whenever a person is arrested upon a warrant in a county or city other than that which the charge is to be tried, or in a county or city contiguous thereto the deputy making the arrest shall bring the accused before a judicial officer authorized to grant bail in the county or city in which the accused is arrested. Such official shall either commit the accused to the custody of an officer for transfer forthwith to the county or city where the charge is to be tried, or admit the accused to bail or to commit him to jail for transfer as soon as possible; and such official shall endorse on the warrant the action taken thereon. (Also see Virginia Code § 19.2-74, unless otherwise stated by the issuing officer).

i. Escape, Flight and Pursuit; Arrest Anywhere in the State.

(1) Virginia Code § 19.2-77-Whenever a person in the custody of a deputy shall escape, or whenever a person shall flee from a deputy attempting to arrest him/her, such deputy, with or without a warrant, may pursue such person anywhere in the state and, when actually in close pursuit, may arrest him/her wherever he/she is found. If the arrest is made in a county or corporate adjoining that from which the accused fled, the deputy may forthwith return the accused before the proper official of the county or corporation from which he/she fled.

(2) If the arrest is made beyond the foregoing limits, the officer shall proceed according to the provisions of Virginia Code § 19.2-76, and if such arrest is made without a warrant, the deputy shall procure a warrant from the magistrate of the county or city wherein the arrest was made, charging the accused with the offense committed in the county or corporation from which he fled.

j. Exemption of Such Witnesses from Arrest or Service of Process

(1) Virginia Code § 19.2-280-If a person comes into this state in obedience to a summons directing him/her to attend and testify in this state he/she shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his/her entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning there from, he/she shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his/her entrance into this state under the summons.

k. Arrest of Suspect/ Inside Dwelling

(1) If a deputy wishes to arrest a suspect inside of a dwelling and the dwelling belongs to the suspect, an arrest warrant may be required. If the dwelling belongs to another person, and that person refuses to allow a search, then the deputy must obtain a search warrant before searching the dwelling.

(2) A search warrant is not required if the deputy is in hot pursuit of the suspect.

1. Return of Warrant

(1) Upon executing the warrant, the arresting deputy shall give the date of execution on it, and then return it to the court, fewer copies given to the arrested person.

C. Arrest without a Warrant

(a) Authority

i) Virginia Code permits a warrantless arrest of a person, but the person so arrested “shall be brought forthwith before a magistrate or other issuing authority having jurisdiction who shall proceed to examine the deputy making the arrest under oath.”

(b) When Warrantless Arrests May Be Made: Virginia Code § 19.2-81 states a deputy may make a warrantless arrest:

i) When a person commits a crime in the deputy’s presence;

ii) The deputy has “reasonable grounds or probable cause to suspect any person of having committed a felony not in the deputy’s presence”;

iii) At the scene of any motor vehicle accident on any highway when, based upon personal investigation, the deputy has “reasonable grounds to believe...that a crime has been committed by any person then and there present”;

iv) At any hospital or medical facility to which any person involved in a motor vehicle accident has been transported, provided the deputy has “reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by that person”;

v) In the apprehension of any person charged with the theft of any motor vehicle on any highway when the deputy “has reasonable grounds to believe...that a crime has been committed by any person then and there present”;

vi) In addition, such deputy may within 3 hours of the occurrence of any such accident involving a motor vehicle, arrest without a warrant at any location any person whom the deputy has probable cause to suspect of driving or operating such motor vehicle while intoxicated in violation of Virginia Code § 18.2-266, 18.2-266.1, 46.2-341.24

vii) When any person is charged with a crime in another jurisdiction and the deputy has received:

a) A photocopy of a warrant;

b) A telegram;

c) A computer printout;



- d) A facsimile printout; or
- e) A radio, telephone or Teletype message, which gives:
  - (1) The name of the wanted person or an accurate description;
  - (2) The crime alleged;
    - viii) When the deputy receives a radio message from the department that a warrant for an alleged misdemeanor is on file;
    - ix) When an alleged misdemeanor not committed in the deputy's presence involves shoplifting and a "reasonable complaint of the person who observed the alleged offense" gives probable cause;
    - x) For assault and battery when the deputy has probable cause to arrest based upon the reasonable complaint of the person who observed the offense. Virginia Code § 19.2-81.3 allows arrest without a warrant in cases of assault and battery against a family or household member, stalking, and for violations of protective orders;
    - xi) Virginia Code § 46.2-882 states when such deputy has observed the registration of the speed of a motor vehicle by radar (or other electrical device), or when such deputy has received a radio message from another deputy who has observed the registration of speed by radar; provided however that:
      - a) The arresting deputy is in uniform or displays his/her badge of authority, and
      - b) If the arrest is based on such radio message from another deputy, then:
        - (1) Such radio message must have been dispatched immediately after the speed of the motor vehicle was registered.
        - (2) Such radio message must have furnished the license number or other positive identification of the vehicle.

m. Alternatives to Arrest

- (1) There may be occasions where the deputy will use "officer discretion" and not formally charge an individual with an offense, but issue a warning. Warnings should only be given in misdemeanor offenses and traffic offenses, and if there is a victim, they should be consulted on their desire to charge the individual before a warning is issued.

2. ACTIONS UPON ARREST

- a. Upon arrest on a photocopy of the warrant, telegram, computer printout, facsimile printout or Teletype message, the arresting deputy shall serve a copy of the document on the accused.
- b. The arresting deputy should bring the accused before the magistrate for bail hearing (Virginia Code §19.2-76, §19.2-80 and 19.2-123).
- c. If the person is arrested upon a charge in a county or city contiguous to your jurisdiction in which the charge is to be tried, the arresting deputy may deliver

the accused to the custody of a law enforcement officer having jurisdiction in the county or city in which the charge is to be tried, or he may bring the accused before the magistrate pursuant to Virginia Code § 19.2-76.

- d. The magistrate should conduct a bail hearing and set bail or secure bond if appropriate just as if the accused had been arrested on the warrant from another jurisdiction. The deputy should not request the issuance of any arrest process such as duplicate warrants or fugitive warrants based on the charge in the other jurisdiction within Virginia.
  - e. The arresting deputy will contact the law enforcement officials where the charge(s) was made and inform them that the accused has been arrested on the teletype message (or other arrest document), and if not bonded, ascertain when a representative will arrive to transfer the accused back to the locality having the trial jurisdiction.
  - f. When the person is arrested based on being a fugitive from another state the deputy shall precede according to Virginia Code § 19.2-100.
3. JUVENILES: Refer to Virginia Code § 16.1-246.
4. SUMMONSES: An arresting deputy shall issue a summons to appear at a time and place specified in such summons whenever any person is detained by or in the custody of an arresting deputy for:
- a. “Any violation committed in such deputy’s presence which offense is a violation of “any county, city, or town ordinance, or any provision of the Code of Virginia, or any other misdemeanor, punishable as a Class 1 or Class 2 misdemeanor or for which the accused may receive a jail sentence. Virginia Code § 19.2-74 (A)(1)
  - b.
  - c. “An arrest on a warrant charging an offense for which a summons may be issued...when specifically authorized by the judicial officer issuing the warrant” or
  - d. A violation of any county or any provision of the Code of Virginia [except as otherwise provided in Title 46.2 (Motor Vehicles) or in Virginia Code § 18.2-266 (Driving a Motor Vehicle, Etc., while Intoxicated)] or any other misdemeanor, punishable as a Class 3 or Class 4 Misdemeanor or for which the accused cannot receive a jail sentence.
  - e. Anything in this subsection to the contrary notwithstanding, if any person is believed by the arresting deputy to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting deputy to be likely to cause harm to himself or to any other person, then such person should be brought forthwith before a magistrate, and the procedure for warrantless arrest, pursuant to Virginia Code § 19.2-82 should be followed, Virginia Code § 19.2-74 (A)(1).
  - f. For class 4 Misdemeanors, “the arresting deputy shall take the name and address of such person and issue a summons” after which “the officer shall forthwith release him from custody,” Virginia Code § 19.2-74 (A)(2). The accused is required, however, to give his/her written promise to appear before being released from custody. The statute specifically allows the deputy to take



the accused before a magistrate immediately if the deputy reasonably believes that the accused is likely to disregard the summons or to do injury to himself/herself or others.

- g. In addition to excepting (“as otherwise provided”) Title 46.2 (Motor Vehicles). Virginia Code § 19.2-74 (A)(2) specifically excepts Code §18.2-388 which makes it a Class 4 Misdemeanor for a person to curse or swear profanely, or be drunk in public, Virginia Code § 18.2-388.

#### 5. SUMMONSES: PUBLIC DRUNKENNESS

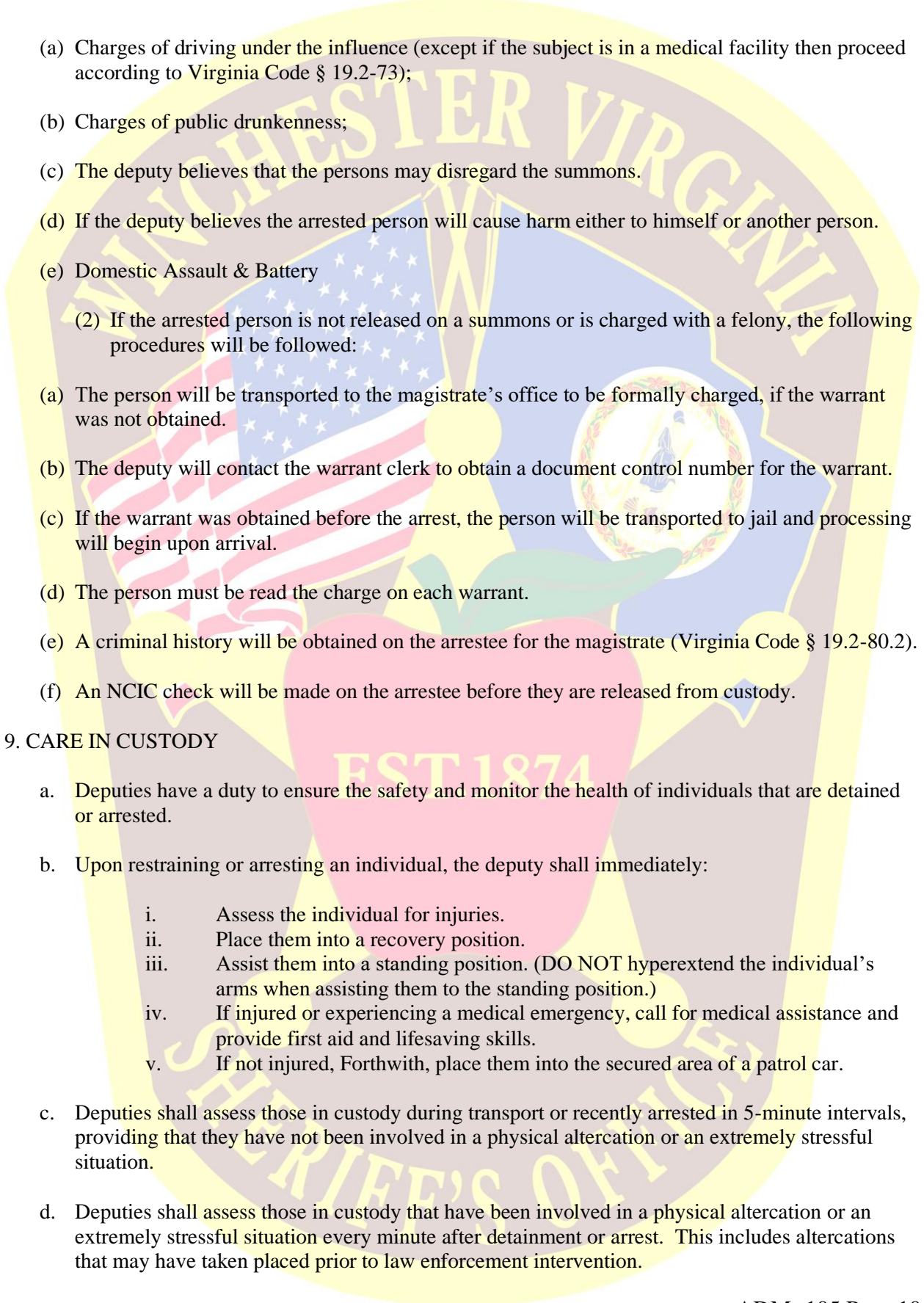
- a. Virginia Code § 19.2-74 controls the procedure for arrest for public drunkenness or profanity; therefore, the arresting deputy may issue a summons to the accused rather than taking him into custody. Since Virginia Code §19.2-74 (A)(1) gives the deputy discretion to issue a summons or bring the accused before a magistrate when the deputy believes the person is likely to disregard the summons or to harm himself or others, then a person charged with public profanity or drunkenness may be arrested and incarcerated for that offense if necessary. Virginia Code § 18.2-388 states that in lieu of arrest a person may be taken to a detoxification center, but no person shall be involuntarily detained in such center.

#### 7. RELEASE ON PROMISE TO APPEAR

- a. In all the above situations, when the arresting deputy issues a summons and releases the accused from custody, the person arrested must first as a condition of his release make a “written promise to appear at [the specified] time and place...”Virginia Code § 19.2-74 (A)(1) and § 19.2-74 (A)(2). If such person refuses to give this written promise to appear, he “shall be taken immediately by the arresting deputy before a magistrate or other issuing authority having jurisdiction, who shall proceed according to the provisions of Virginia Code § 9.2-74 (A)(3) (Paragraph 2). Alternatively, if such person gives his written promise, but later willfully violates this promise, he shall be subject to the penalties of Virginia Code § 19.2-128 [Class 1] Misdemeanor in addition to original charge and possible forfeiture of pledged security,”] Virginia Code § 19.2-74 (A)(3).
- b. When “any person [is] charged with committing any violation of Virginia Code § 18.2-407...[which proscribes riot or unlawful assembly], he/she may be arrested and immediately brought before a magistrate who shall proceed as provided in Virginia Code § 19.2-82 [procedure upon arrest without a warrant],” Virginia Code § 19.2-74 (A)(3).
- c. When release on a summons is appropriate, the arrested person will not be photographed or fingerprinted before release. This processing will be done after appearance in court and only in cases where there is a conviction, Virginia Code § 19.2-74.

#### 8. BOOKING PROCEDURES

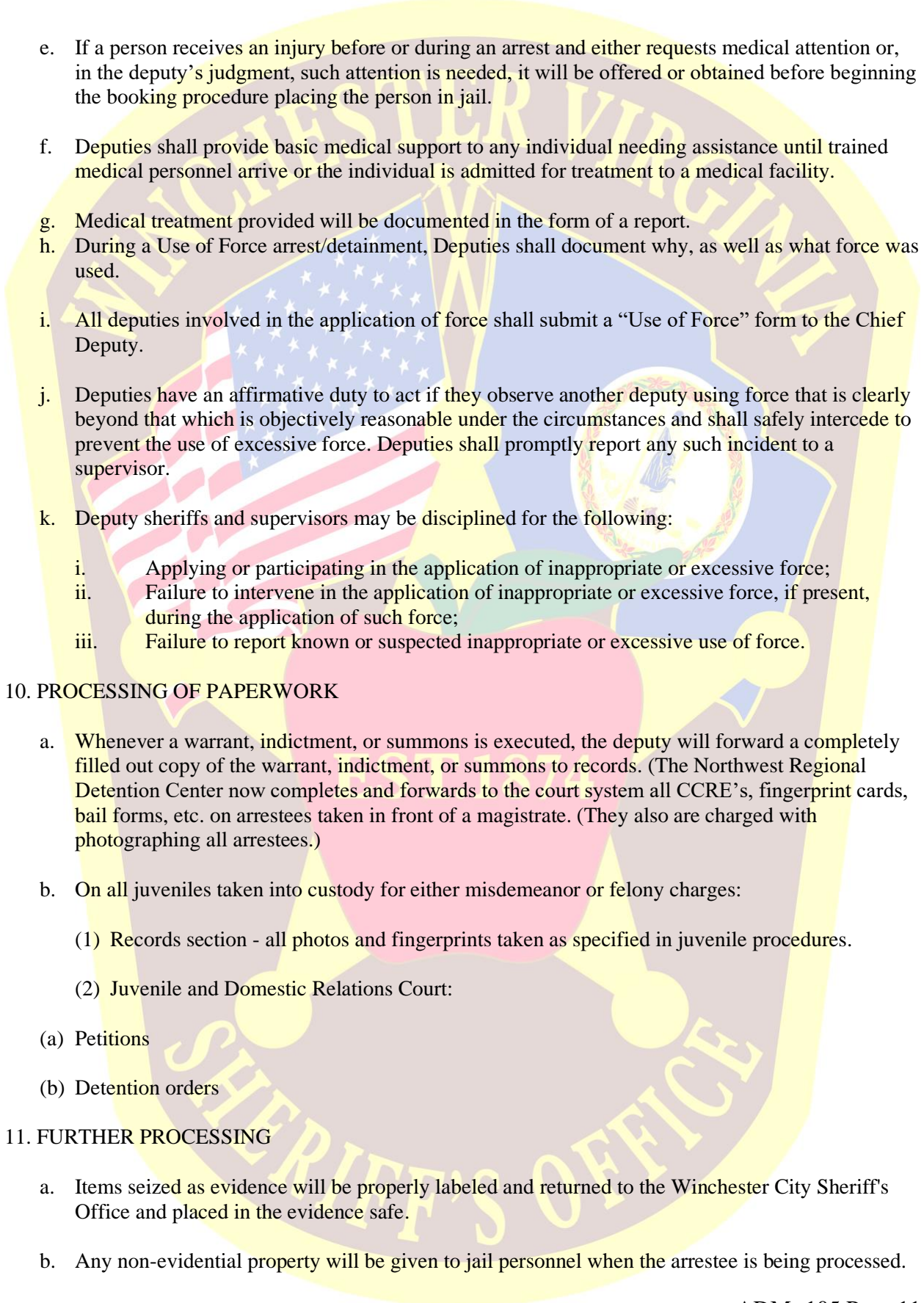
- a. Constitutional Considerations
  - (1) Refer to General Order ADM-104 for a discussion of search guidelines and below for searches incident to arrest. Refer to General Order ADM-103 for a discussion of advising arrested persons of their rights.
- b. Releases on Summonses and mandatory arrest
  - (1) The person should be released on a Virginia Uniform Summons at the location of arrest on all misdemeanors with the following exceptions:

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- (a) Charges of driving under the influence (except if the subject is in a medical facility then proceed according to Virginia Code § 19.2-73);
  - (b) Charges of public drunkenness;
  - (c) The deputy believes that the persons may disregard the summons.
  - (d) If the deputy believes the arrested person will cause harm either to himself or another person.
  - (e) Domestic Assault & Battery
    - (2) If the arrested person is not released on a summons or is charged with a felony, the following procedures will be followed:
      - (a) The person will be transported to the magistrate's office to be formally charged, if the warrant was not obtained.
      - (b) The deputy will contact the warrant clerk to obtain a document control number for the warrant.
      - (c) If the warrant was obtained before the arrest, the person will be transported to jail and processing will begin upon arrival.
      - (d) The person must be read the charge on each warrant.
      - (e) A criminal history will be obtained on the arrestee for the magistrate (Virginia Code § 19.2-80.2).
      - (f) An NCIC check will be made on the arrestee before they are released from custody.

## 9. CARE IN CUSTODY

- a. Deputies have a duty to ensure the safety and monitor the health of individuals that are detained or arrested.
- b. Upon restraining or arresting an individual, the deputy shall immediately:
  - i. Assess the individual for injuries.
  - ii. Place them into a recovery position.
  - iii. Assist them into a standing position. (DO NOT hyperextend the individual's arms when assisting them to the standing position.)
  - iv. If injured or experiencing a medical emergency, call for medical assistance and provide first aid and lifesaving skills.
  - v. If not injured, Forthwith, place them into the secured area of a patrol car.
- c. Deputies shall assess those in custody during transport or recently arrested in 5-minute intervals, providing that they have not been involved in a physical altercation or an extremely stressful situation.
- d. Deputies shall assess those in custody that have been involved in a physical altercation or an extremely stressful situation every minute after detainment or arrest. This includes altercations that may have taken place prior to law enforcement intervention.



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- e. If a person receives an injury before or during an arrest and either requests medical attention or, in the deputy's judgment, such attention is needed, it will be offered or obtained before beginning the booking procedure placing the person in jail.
  - f. Deputies shall provide basic medical support to any individual needing assistance until trained medical personnel arrive or the individual is admitted for treatment to a medical facility.
  - g. Medical treatment provided will be documented in the form of a report.
  - h. During a Use of Force arrest/detainment, Deputies shall document why, as well as what force was used.
  - i. All deputies involved in the application of force shall submit a "Use of Force" form to the Chief Deputy.
  - j. Deputies have an affirmative duty to act if they observe another deputy using force that is clearly beyond that which is objectively reasonable under the circumstances and shall safely intercede to prevent the use of excessive force. Deputies shall promptly report any such incident to a supervisor.
  - k. Deputy sheriffs and supervisors may be disciplined for the following:
    - i. Applying or participating in the application of inappropriate or excessive force;
    - ii. Failure to intervene in the application of inappropriate or excessive force, if present, during the application of such force;
    - iii. Failure to report known or suspected inappropriate or excessive use of force.

#### 10. PROCESSING OF PAPERWORK

- a. Whenever a warrant, indictment, or summons is executed, the deputy will forward a completely filled out copy of the warrant, indictment, or summons to records. (The Northwest Regional Detention Center now completes and forwards to the court system all CCRE's, fingerprint cards, bail forms, etc. on arrestees taken in front of a magistrate. (They also are charged with photographing all arrestees.)
- b. On all juveniles taken into custody for either misdemeanor or felony charges:
  - (1) Records section - all photos and fingerprints taken as specified in juvenile procedures.
  - (2) Juvenile and Domestic Relations Court:
    - (a) Petitions
    - (b) Detention orders

#### 11. FURTHER PROCESSING

- a. Items seized as evidence will be properly labeled and returned to the Winchester City Sheriff's Office and placed in the evidence safe.
- b. Any non-evidential property will be given to jail personnel when the arrestee is being processed.

## 12. RELEASE FROM ARREST

### a. Legal Background

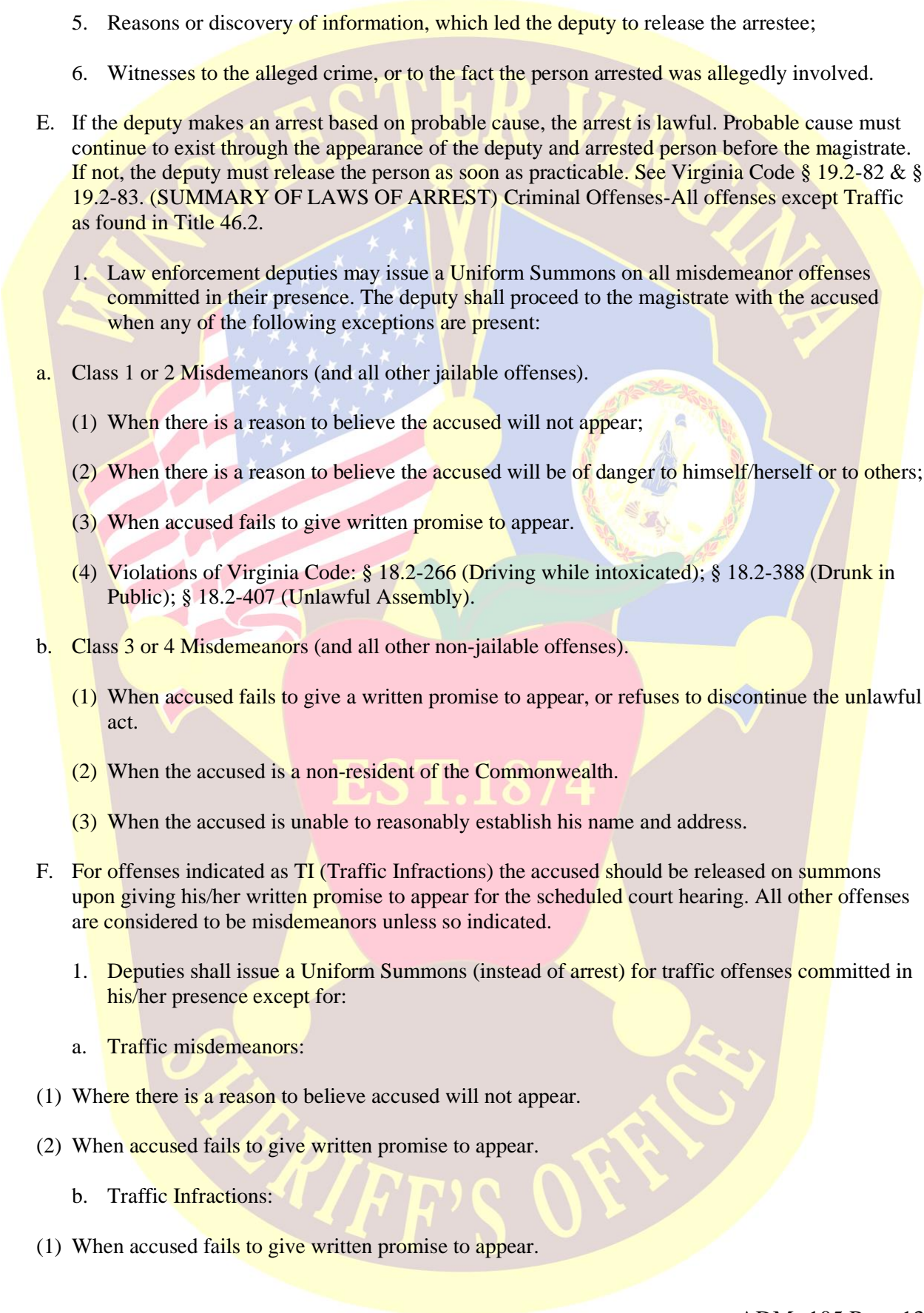
- (1) In some instances, deputies may encounter a circumstance where probable cause develops to arrest a person for an offense only to find out shortly thereafter that the person under arrest did not commit a crime, or that further investigation reveals the event does not constitute a crime. It is imperative, then, that the deputy ends the arrest process immediately to avoid becoming liable for false imprisonment. False imprisonment, as defined in *Montgomery Ward v. Freeman*, 199 F.2D 720 (1953), “is the restraint of one’s liberty without any sufficient legal excuse.”
- (2) The Attorney General of Virginia has issued an opinion, Report of the Attorney General (1971), Page 102, which states the following:

“It is my opinion, therefore, that an arresting officer, who may have had probable cause to initially make the arrest without a warrant, may thereafter conclude that further prosecution of the arrestee would be improper or fruitless and may, subsequently, discharge him from custody without the necessity of taking him before a magistrate.”

As stated by the Attorney General, a deputy is required to formally charge only those persons who have been placed under arrest, if the deputy concludes that further prosecution would be proper and fruitful.

- A. The arresting deputy may not formally charge those under arrest when it is proven to his/her satisfaction that either the person under arrest did not commit a crime or that an event investigated is found not to constitute a crime.
- B. When a deputy releases a subject from arrest, he/she should take care to return the person to the same location occupied before the arrest. For example, a deputy arrests a subject and then transports him/her to the magistrate’s office, and then the deputy learns that the probable cause he/she used to make the arrest no longer exists. Instead of releasing the subject along the roadside, the deputy should return to the location of the arrest and release the person. If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner, and the Sheriff’s Office will be responsible for the tow bill.
- C. Upon releasing a person in this manner, the deputy shall immediately contact his/her supervisor and advise him/her of the incident.
- D. To protect him/her and the department, the deputy shall document in an incident report:
  1. Date and time of arrest;
  2. Person arrested (name, address, date of birth, race, etc.);
  3. Location of arrest;
  4. Location and time of release from arrest and whether the person was transported;



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5. Reasons or discovery of information, which led the deputy to release the arrestee;
  6. Witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.
- E. If the deputy makes an arrest based on probable cause, the arrest is lawful. Probable cause must continue to exist through the appearance of the deputy and arrested person before the magistrate. If not, the deputy must release the person as soon as practicable. See Virginia Code § 19.2-82 & § 19.2-83. (SUMMARY OF LAWS OF ARREST) Criminal Offenses-All offenses except Traffic as found in Title 46.2.
1. Law enforcement deputies may issue a Uniform Summons on all misdemeanor offenses committed in their presence. The deputy shall proceed to the magistrate with the accused when any of the following exceptions are present:
    - a. Class 1 or 2 Misdemeanors (and all other jailable offenses).
      - (1) When there is a reason to believe the accused will not appear;
      - (2) When there is a reason to believe the accused will be of danger to himself/herself or to others;
      - (3) When accused fails to give written promise to appear.
      - (4) Violations of Virginia Code: § 18.2-266 (Driving while intoxicated); § 18.2-388 (Drunk in Public); § 18.2-407 (Unlawful Assembly).
    - b. Class 3 or 4 Misdemeanors (and all other non-jailable offenses).
      - (1) When accused fails to give a written promise to appear, or refuses to discontinue the unlawful act.
      - (2) When the accused is a non-resident of the Commonwealth.
      - (3) When the accused is unable to reasonably establish his name and address.
- F. For offenses indicated as TI (Traffic Infractions) the accused should be released on summons upon giving his/her written promise to appear for the scheduled court hearing. All other offenses are considered to be misdemeanors unless so indicated.
1. Deputies shall issue a Uniform Summons (instead of arrest) for traffic offenses committed in his/her presence except for:
    - a. Traffic misdemeanors:
      - (1) Where there is a reason to believe accused will not appear.
      - (2) When accused fails to give written promise to appear.
    - b. Traffic Infractions:
      - (1) When accused fails to give written promise to appear.

c. Violations of law:

G. The deputy shall proceed to the magistrate with the accused when any of the following exceptions are present:

- (1) Committed by motorists from reciprocal states, which require revocation of license, if convicted.
- (2) When the accused holds a license from a non-reciprocal state.
- (3) When the accused is unable to reasonably establish his name and address.

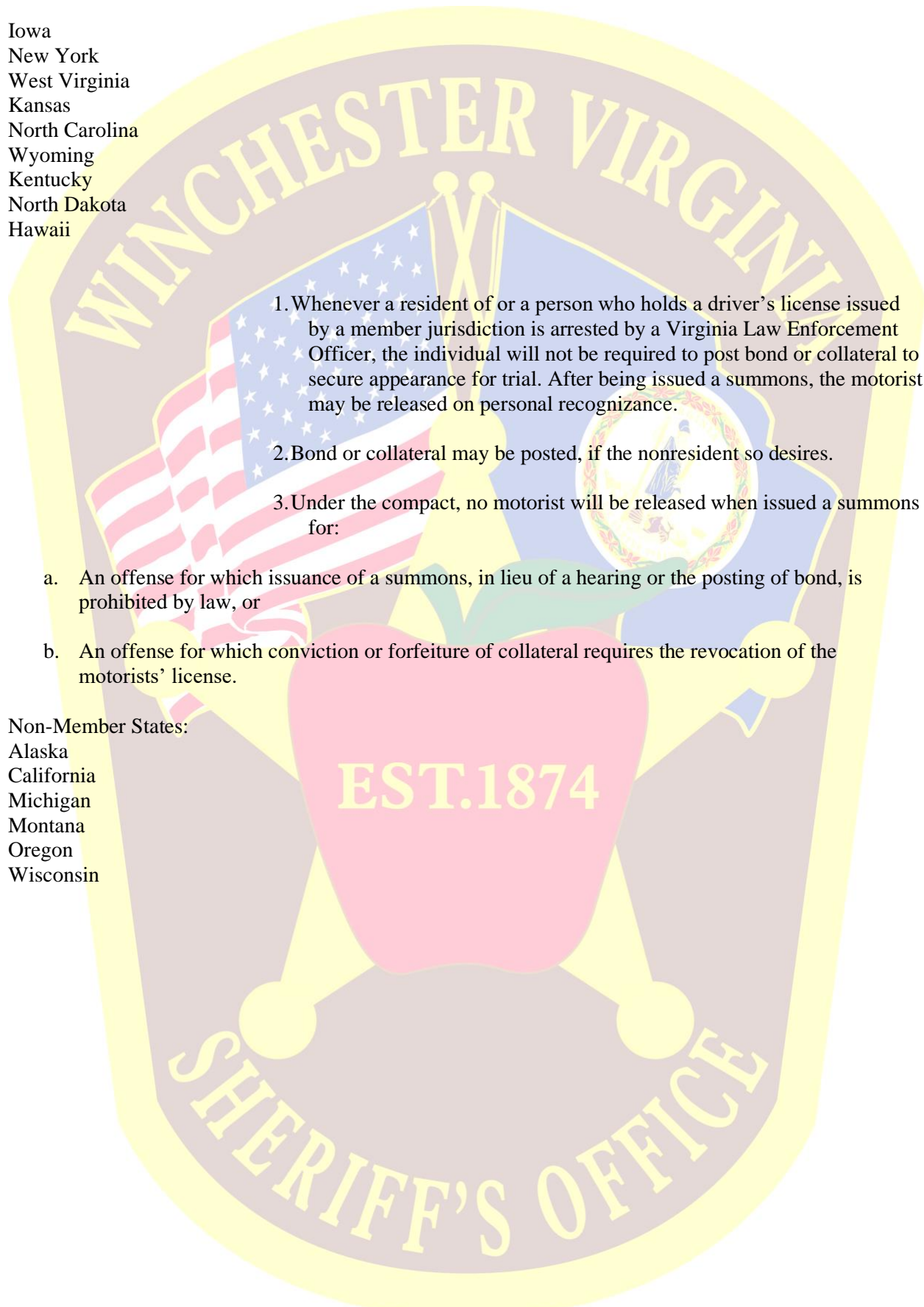
H. Reciprocal States

(1) As of January 1, 1996, the following states have been entered into a reciprocity agreement with Virginia and have joined the Non-Resident Violator Compact:

- Alabama
- Louisiana
- Ohio
- Arizona
- Maine
- Oklahoma
- Arkansas
- Maryland
- Pennsylvania
- Colorado
- Massachusetts
- Rhode Island
- Connecticut
- Minnesota
- South Carolina
- Delaware
- Mississippi
- South Dakota
- District of Columbia
- Missouri
- Tennessee
- Florida
- Nebraska
- Texas
- Georgia
- Nevada
- Utah
- Idaho
- New Hampshire
- Vermont
- Illinois
- New Jersey
- Virginia
- Indiana
- New Mexico
- Washington



Iowa  
New York  
West Virginia  
Kansas  
North Carolina  
Wyoming  
Kentucky  
North Dakota  
Hawaii



1. Whenever a resident of or a person who holds a driver's license issued by a member jurisdiction is arrested by a Virginia Law Enforcement Officer, the individual will not be required to post bond or collateral to secure appearance for trial. After being issued a summons, the motorist may be released on personal recognizance.

2. Bond or collateral may be posted, if the nonresident so desires.

3. Under the compact, no motorist will be released when issued a summons for:

- a. An offense for which issuance of a summons, in lieu of a hearing or the posting of bond, is prohibited by law, or
- b. An offense for which conviction or forfeiture of collateral requires the revocation of the motorists' license.

Non-Member States:

Alaska  
California  
Michigan  
Montana  
Oregon  
Wisconsin